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Attorneys for Defendant
ROBERT W. PETERSON, individually and
dba PETERSON APPRAISAL GROUP

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA -SAN JOSE DIVISION

LANDMARK HOME MORTGAGE, INC.,

Plaintiffs,

vs.

GUILLERMO FLORES, ALVIN
SILBERNAGEL, ATLAS FINANCIAL
SERVICES, INC. dba ATLAS FINANCIAL
SERVICES and ATLAS REALTY, BERTHA
MORENO, JOSE ARELLANO, ROBERT
W. PETERSON, individually and dba
PETERSON APPRAISAL GROUP, and Does
1 through 50,

Defendants

Case No. C 07-04654 JF/HRL

ANSWER OF DEFENDANT ROBERT
W. PETERSON, individually and
dba PETERSON APPRAISAL GROUP
TO PLAINTIFF'S COMPLAINT

Jury Demanded

COMES NOW DEFENDANT, ROBERT W. PETERSON, individually and dba PETERSON
APPRAISAL GROUP and answers the unverified complaint of plaintiff LANDMARK HOME
MORTGAGE, INC., as follows:

GENERAL ALLEGATIONS

1. This defendant is without sufficient knowledge or information to enable him to answer the allegations in Paragraph 1 of the Complaint.
2. This defendant is without sufficient knowledge or information to enable him to answer the allegations in Paragraph 2 of the Complaint.
3. This defendant admits those allegations in Paragraph 3 of the complaint to the extent that

1 it is aware of an entity known as Atlas Realty/Atlas Financial Services which has a main
 2 office located at 2020 South Bascom Avenue, Suite C, Campbell California 95008. This
 3 defendant is without sufficient knowledge or information to enable him to answer the
 4 remainder of the allegations in Paragraph 3 of the Complaint.

5 4. This defendant is without sufficient knowledge or information to enable him to answer
 6 the allegations in Paragraph 4 of the Complaint.

7 5. This defendant is without sufficient knowledge or information to enable him to answer
 8 the allegations in Paragraph 5 of the Complaint.

9 6. This defendant is without sufficient knowledge or information to enable him to answer
 10 the allegations in Paragraph 6 of the Complaint.

11 7. This defendant admits those allegations contained in Paragraph 7 of the complaint.

12 8. This defendant is without sufficient knowledge or information to enable him to answer
 13 the allegations in Paragraph 8 of the Complaint.

14 9. This defendant admits that he prepared an appraisal report in March 2006 for a piece of
 15 real property located at 3784 Steve Lillie Circle, Stockton, CA 95206 at the request of
 16 Atlas Realty, 1653 Tierra Buena Drive, San Jose, CA. This defendant is without
 17 sufficient knowledge or information to enable him to answer any other allegations in
 18 Paragraph 9 of the Complaint.

19 **FIRST CAUSE OF ACTION**

20 **(Declaratory Relief by Landmark Against Atlas)**

21 10. This defendant is without sufficient knowledge or information to enable him to answer
 22 the allegations in Paragraph 10 of the Complaint.

23 11. This defendant is without sufficient knowledge or information to enable him to answer
 24 the allegations in Paragraph 11 of the Complaint.

25 12. This defendant is without sufficient knowledge or information to enable him to answer
 26 the allegations in Paragraph 12 of the Complaint.

27 13. This defendant is without sufficient knowledge or information to enable him to answer
 28 the allegations in Paragraph 13 of the Complaint.

1 14. This defendant is without sufficient knowledge or information to enable him to answer
2 the allegations in Paragraph 14 of the Complaint.

3 15. This defendant is without sufficient knowledge or information to enable him to answer
4 the allegations in Paragraph 15 of the Complaint.

5 16. This defendant is without sufficient knowledge or information to enable him to answer
6 the allegations in Paragraph 16 of the Complaint.

7 17. This defendant is without sufficient knowledge or information to enable him to answer
8 the allegations in Paragraph 17 of the Complaint.

9 18. This defendant is without sufficient knowledge or information to enable him to answer
10 the allegations in Paragraph 18 of the Complaint.

11 19. This defendant is without sufficient knowledge or information to enable him to answer
12 the allegations in Paragraph 19 of the Complaint.

13 20. This defendant is without sufficient knowledge or information to enable him to answer
14 the allegations in Paragraph 20 of the Complaint.

15 21. This defendant is without sufficient knowledge or information to enable him to answer
16 the allegations in Paragraph 21 of the Complaint.

17 22. This defendant is without sufficient knowledge or information to enable him to answer
18 the allegations in Paragraph 22 of the Complaint.

19 **SECOND CAUSE OF ACTION**

20 **(Breach of Contract by Landmark against Atlas)**

21 23. This defendant is without sufficient knowledge or information to enable him to answer
22 the allegations in Paragraph 23 of the Complaint.

23 24. This defendant is without sufficient knowledge or information to enable him to answer
24 the allegations in Paragraph 24 of the Complaint.

25 25. This defendant is without sufficient knowledge or information to enable him to answer
26 the allegations in Paragraph 25 of the Complaint.

27 26. This defendant is without sufficient knowledge or information to enable him to answer
28 the allegations in Paragraph 26 of the Complaint.

27. This defendant is without sufficient knowledge or information to enable him to answer the allegations in Paragraph 27 of the Complaint.

28. This defendant is without sufficient knowledge or information to enable him to answer the allegations in Paragraph 28 of the Complaint.

29. This defendant is without sufficient knowledge or information to enable him to answer the allegations in Paragraph 29 of the Complaint.

THIRD CAUSE OF ACTION

(By Landmark for Deceit and Misrepresentation against Guillermo Flores)

30. This defendant is without sufficient knowledge or information to enable him to answer the allegations in Paragraph 30 of the Complaint.

31. This defendant is without sufficient knowledge or information to enable him to answer the allegations in Paragraph 31 of the Complaint.

32. This defendant is without sufficient knowledge or information to enable him to answer the allegations in Paragraph 32 of the Complaint.

33. This defendant is without sufficient knowledge or information to enable him to answer the allegations in Paragraph 33 of the Complaint.

34. This defendant is without sufficient knowledge or information to enable him to answer the allegations in Paragraph 34 of the Complaint.

35. This defendant is without sufficient knowledge or information to enable him to answer the allegations in Paragraph 35 of the Complaint.

36. This defendant is without sufficient knowledge or information to enable him to answer the allegations in Paragraph 36 of the Complaint.

37. This defendant is without sufficient knowledge or information to enable him to answer the allegations in Paragraph 37 of the Complaint.

38. This defendant is without sufficient knowledge or information to enable him to answer the allegations in Paragraph 38 of the Complaint.

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FOURTH CAUSE OF ACTION

(Damages for Negligence against Atlas, Silbernagel, Arellano and Moreno)

39. This defendant is without sufficient knowledge or information to enable him to answer the allegations in Paragraph 39 of the Complaint.

40. This defendant is without sufficient knowledge or information to enable him to answer the allegations in Paragraph 40 of the Complaint.

41. This defendant is without sufficient knowledge or information to enable him to answer the allegations in Paragraph 41 of the Complaint.

42. This defendant is without sufficient knowledge or information to enable him to answer the allegations in Paragraph 42 of the Complaint.

43. This defendant is without sufficient knowledge or information to enable him to answer the allegations in Paragraph 43 of the Complaint.

FIFTH CAUSE OF ACTION

(Damages for Deceit and Misrepresentation against Arellano, Moreno and Peterson)

44[a]. This defendant is without sufficient knowledge or information to enable him to answer the allegations in Paragraph 44[a] of the Complaint.

44[b]. This defendant admits that he prepared an appraisal report in March 2006 for a piece of real property located at 3784 Steve Lillie Circle, Stockton, CA 95206 at the request of Atlas Realty, 1653 Tierra Buena Drive, San Jose, CA. This defendant denies the allegations in Paragraph 44[b] of the Complaint to the extent it alleges the appraisal report overstated the value of the real property. This defendant is without sufficient knowledge or information to enable him to answer the remainder of the allegations in Paragraph 44[b] of the Complaint.

45. This defendant is without sufficient knowledge or information to enable him to answer the allegations in Paragraph 45 of the Complaint.

46. This defendant denies the allegations in Paragraph 46 of the Complaint to the extent it alleges the Plaintiff sustained any legally compensable damages as a result of any alleged act or omission by this defendant. This defendant also denies the allegations in Paragraph

1 46 of the Complaint to the extent that it alleges this defendant engaged in any act of
2 deceit or made any misrepresentations. This defendant is without sufficient knowledge or
3 information to enable him to answer the remainder of the allegations in Paragraph 46 of
4 the Complaint.

5 47. This defendant denies the allegations in Paragraph 47 of the Complaint to the extent it
6 alleges the Plaintiff sustained any legally compensable damages as a result of any alleged
7 act or omission by this defendant and denies that the Plaintiff is entitled to recover
8 exemplary damages from this defendant. This defendant also denies the allegations in
9 Paragraph 47 of the Complaint to the extent it alleges this defendant engaged in any
10 alleged act or omission in conscious disregard of the rights of the Plaintiff. This
11 defendant is without sufficient knowledge or information to enable him to answer the
12 remainder of the allegations in Paragraph 47 of the Complaint.

13 **SIXTH CAUSE OF ACTION**

14 **(Damages for Negligence against Peterson)**

15 48. This defendant is without sufficient knowledge or information to enable him to answer
16 the allegations in Paragraph 48 of the Complaint.

17 49. This defendant admits that he is a licensed real estate appraiser who owes a duty of care
18 under a negligence theory to his client. This defendant denies the allegations in Paragraph
19 49 of the Complaint to the extent it alleges that a real estate appraiser owes a duty of care
20 under a negligence theory to individuals or entities other than the real estate appraiser's
21 specific client.

22 50. This defendant denies the allegations in Paragraph 50 of the Complaint and specifically
23 denies that the appraisal he performed for the property located at 3784 Steve Lillie Circle,
24 Stockton, CA 95206 overvalued the property and denies that the appraisal for this
25 property was below the standard of care.

26 51. This defendant denies the allegations in Paragraph 51 of the Complaint and specifically
27 denies that the that the appraisal he performed for the property located at 3784 Steve
28 Lillie Circle, Stockton, CA 95206 overvalued the property, denies that the appraisal for

1 this property was below the standard of care, and denies that the Plaintiff sustained any
2 legally compensable damages as a result of any alleged act or omission by this defendant.

3 52. This defendant denies the allegations in Paragraph 52 of the Complaint and specifically
4 denies that the appraisal he performed for the property located at 3784 Steve Lillie Circle,
5 Stockton, CA 95206 overvalued the property, denies that the appraisal for this property
6 was below the standard of care, and denies that the Plaintiff is entitled to claim exemplary
7 damages against this defendant under this cause of action or in this action in general.

8 53. This defendant is without sufficient knowledge or information to enable him to answer
9 the allegations in Paragraph 53 of the Complaint.

10 54. This defendant is without sufficient knowledge or information to enable him to answer
11 the allegations in Paragraph 54 of the Complaint.

12 55. This defendant is without sufficient knowledge or information to enable him to answer
13 the allegations in Paragraph 55 of the Complaint.

14 56. This defendant is without sufficient knowledge or information to enable him to answer
15 the allegations in Paragraph 56 of the Complaint.

16 57. This defendant is without sufficient knowledge or information to enable him to answer
17 the allegations in Paragraph 57 of the Complaint.

18 **AFFIRMATIVE DEFENSES**

19 (1)

20 COMPARATIVE FAULT

21 Defendant alleges that the plaintiff was guilty of contributory fault/negligence in the
22 matters set forth in the complaint which proximately caused or contributed to the damages
23 complained of.

24 (2)

25 FAILURE TO STATE A CAUSE OF ACTION

26 Defendant alleges that neither the complaint nor any cause of action in the complaint
27 states facts sufficient to substantiate a cause of action against this appearing defendant.

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1 (3)

2 FAILURE TO STATE A CAUSE OF ACTION FOR PUNITIVE DAMAGES

3 Defendant alleges that neither the complaint nor any cause of action in the complaint
4 states facts sufficient to substantiate a cause of action for punitive damages against this
5 defendant.

6 (4)

7 MITIGATION OF DAMAGES

8 Defendant alleges that, on information and belief, plaintiff's alleged damages, if any there
9 were, were aggravated by the plaintiff's failure to use reasonable diligence to mitigate them.

10 (5)

11 CO-DEFENDANT LIABILITY

12 Defendant alleges that the co-defendants, and each of them, named and unnamed in the
13 complaint, were guilty of negligence, or other acts or omissions in the matters set forth in the
14 complaint, which proximately caused or contributed to the damages or loss complained of, if any,
15 and that the Court is requested to determine and allocate the percentage of negligence attributable
16 to each of the co-defendants.

17 (6)

18 STATUTE OF LIMITATIONS

19 Defendant alleges that the action and all causes of action are barred by the statute of
20 limitations, and more specifically set forth in California Code of Civil Procedure §§ 337, 337.1,
21 337.15, 338, 339, 340, 340.6 and 343 and each and every subdivision of the referenced statutes.

22 (7)

23 WAIVER

24 Defendant alleges that plaintiff has waived its right to maintain the action filed in this
25 case.

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(8)

ESTOPPEL

Defendant alleges that the plaintiff is estopped by action of law or by conduct from maintaining the action filed in this case.

(9)

LACHES

Defendant alleges that the action filed in this case is not maintainable under the doctrine of laches.

(10)

UNCLEAN HANDS

Defendant alleges that the plaintiff in this case is guilty of "unclean hands" in the matters set forth in the complaint, which conduct extinguishes the right to equitable relief in this action.

(11)

PUNITIVE DAMAGES: UNCONSTITUTIONAL

Defendant alleges that plaintiff's complaint fails to state a cause of action for punitive damages, in that claims for punitive damages in civil cases brought by private parties may be unconstitutional under both State and Federal Constitutions.

(12)

NO RELIANCE

Defendant alleges that there is no reliance by the plaintiffs on any representations, whether express or implied, alleged to have been made by this defendant.

(13)

UNREASONABLE RELIANCE

Defendant alleges that any reliance on the part of the plaintiff on any representations, express or implied, allegedly made by the defendant was unreasonable and unjustified.

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1 WHEREFORE, this Defendant prays that:

2 1. The Plaintiff take nothing by way of this action;

3 2. This Defendant be awarded attorney fees and costs of this action; and

4 3. Such other relief as this Court may deem proper.

5 Dated: November 7, 2007

6 ERICKSEN, ARBUTHNOT, KILDUFF, DAY & LINDSTROM, INC.

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8 /S/
Steve W. Dollar, Esq.
9 Attorneys for Defendant
ROBERT W. PETERSON, individually and dba
10 PETERSON APPRAISAL GROUP
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